IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

MONDAY, THE NINTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

HON'BLE SRI DEVINDER GUPTA,

CHIEF JUSTICE

and
HON'BLE SRI JUSTICE C.V.RAMULU

WRIT APPEAL NO : 1175 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 23/01/2004 in WP NO : 3128 OF 2003 on the file of the High Court.)

Between:

1 M. Krishna Prasad S/o Srinivas Rao
R/o 1-10-123/2, Ashkonagar Hyderabad-500 020
2 V. Gajalakshmi W/o Srinivasa Rao
R/o 1-10-123/2, Ashkonagar Hyderabad-500 020

..... APPELLANTS

AND

1 Prudential Cooperative Urban Bank Ltd., R.P. Road, Secunderabad
2 V. Srinivasa Rao S/o Late. Jaganatham
R/o 204, H. No. 1-10-123, Srikrishna Apartments, Ashoknagar, Hyderabad
3 The Cooperative Sub-Registrar cum Sale Officer, Prudential Cooperative Urban Bank Ltd., R.P. Road, Secunderabad

.....RESPONDENTS

Counsel for the Appellants : MR.J.PRABHAKAR

Counsel for the Respondents 1 & 2: None appeared.

Counsel for the respondent No.3: G.P. for Cooperation.

The Court made the following :

ORAL JUDGMENT:

(Per Hon'ble The Chief Justice)

....

1. Appellants are the writ petitioners, whose writ petition was disposed of. Appellants had in fact approached 3rd respondent with objection petition raising the dispute over the property which was sought to be attached and sold in execution of decree obtained by 1st respondent – Bank against 2nd respondent. Objections were dismissed. Matter was taken up further by the petitioners – appellants and direction was issued earlier for disposal of the objections by 3rd respondent. 3rd respondent thereafter on 19.12.2002 passed an order pursuant to the direction of the High Court dismissing the claim petition being frivolous, baseless and unsubstantiated. This order was challenged in the writ petition and learned single Judge disposed of the writ petition reserving liberty to the petitioners to establish their claim in a Civil Court as per the provisions contained in Rule 52(21) of A.P. Cooperative Societies Rules.

2. Learned counsel for the appellants has brought to our notice an important aspect and subsequent development that after filing of the claim petition,

rights of the petitioners – appellants and 2nd respondent over the property sought to be attached and sold had been settled in civil litigation by a decree dated 05.02.2003 passed in O.S.No.236 of 2002 on the file of Chief Judge, City Civil Court, Hyderabad. Petitioners – appellants have been held entitled to 1/6th and 2/3rd share in the suit schedule property. In the said decree both the respondent – Bank and 2nd respondent are parties. The remaining share in the property, according to the petitioners – appellants, belongs to 2nd respondent, which alone will be liable to be attached and sold. Prior to this decree, petitioners – appellants had laid a claim that the entire property was not liable to be attached and sold.

3. Insofar as respondent No.3 is concerned, he can only attach and sell in that property which belongs to 2nd respondent and obviously cannot attach and sell property not belonging to 2nd respondent in execution of decree obtained by 1st respondent – Bank against 2nd respondent. Since this was not an objection taken initially, with leave and liberty granted to the appellants – petitioners to file fresh objections against 3rd respondent in accordance with law, the appeal is disposed of. No costs.

_____

DEVINDER GUPTA. C.J.,

_____

C.V. RAMULU. J.,

Dated: 09.08.2004.

VRK.

To

1 Prudential Cooperative Urban Bank Ltd., R.P. Road, Secunderabad
2 The Cooperative Sub-Registrar cum Sale Officer, Prudential Cooperative Urban Bank Ltd., R.P. Road, Secunderabad

3. Two CCs to Govt. Pleader for Cooperation, High Court Buildings, Hyderabad (OUT).

4. Two CD copies.

HON'BLE SRI DEVINDER GUPTA,

CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE C.V. RAMULU.

W.A.NO. 1175 OF 2004.

-

(Judgment of the Bench delivered by

Hon'ble The Chief Justice)

Dt: 09.08.2004.